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ABSTRACT

The concern about alcohol marketing and underage drinking has been heightened by recent findings in the scientific research community. Studies have established that alcohol advertising exposure influences a young person's beliefs about alcohol and his/her intention to drink. They also suggest that advertising may have a direct impact on youth drinking practices and drinking problems. These findings are bolstered by similar studies of tobacco advertising, which has been shown to influence the likelihood of young teenagers experimenting with tobacco. In response to this concern, public health advocates are increasingly urging policymakers to consider counter-advertising campaigns. State public health departments in California, Massachusetts and Florida made critical strides in reducing underage smoking rates in their states in recent years by sponsoring tobacco counter-advertising campaigns. Research indicates that this approach should also be used as part of a comprehensive public health strategy to reduce underage drinking. In addition to counter-advertising, the appeal of alcohol to underage youth can be limited by reducing youth exposure to alcohol advertising and marketing. This report undertakes the first nationwide examination, state by state, of the existing tools state officials have at their disposal to reduce youth exposure to alcohol advertising and marketing. (GCP)

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State Alcohol Advertising Laws: Current Status and Model Policies

Report of the Center on Alcohol Marketing and Youth

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STATE ALCOHOL ADVERTISING LAWS:

Current Status and Model Policies

Introduction

Alcohol Advertising: A Key Public Health Concern

The alcohol industry spends more than $4.5 billion each year marketing its products.[1] Underage youth are exposed heavily to this marketing with its youthful themes and images and its placements in media with large youth audiences.[2] Limiting youth exposure to alcohol marketing is a major public health goal since underage drinking is a significant contributor to youth alcohol-related motor vehicle crashes, other forms of injury, violence, suicide, and problems associated with school and family.

The concern about alcohol marketing and underage drinking has been heightened by recent findings in the scientific research community. Studies have established that alcohol advertising exposure influences a young person's beliefs about alcohol and his/her intention to drink.[3] They also suggest that advertising may have a direct impact on youth drinking practices and drinking problems.[4] These findings are bolstered by similar studies of tobacco advertising, which has been shown to influence the likelihood of young teenagers experimenting with tobacco.[5]

In response to this concern, public health advocates are increasingly urging policymakers to consider counter-advertising campaigns. State public health departments in California, Massachusetts and Florida made critical strides in reducing underage smoking rates in their states in recent years by sponsoring tobacco counter-advertising campaigns.[6] Research indicates that this approach should also be used as part of a comprehensive public health strategy to reduce underage drinking.[7]

In addition to counter-advertising, the appeal of alcohol to underage youth can be limited by reducing youth exposure to alcohol advertising and marketing. This report undertakes the first nationwide examination, state by state, of the existing tools state officials have at their disposal to reduce youth exposure to alcohol advertising and marketing.

The Potential Role of State Enforcement

States have systems already in place for administering alcohol advertising regulations, usually (but not always) housed in an Alcoholic Beverage Control (ABC) state agency. Alcohol producers, distributors and retailers must obtain state licenses to do business in a state. Although specific authority varies by state, in general, the ABC agencies have broad authority to enact regulations (based on state statutes), investigate potential violations, and impose administrative sanctions. In control states, which operate retail and/or wholesale operations, retail advertising practices can be established through operational procedures.

These factors point to the importance to the public health community of exploring the potential role of ABC agencies in regulating alcohol advertising. This report takes the initial step in this exploration. It identifies key state regulatory strategies that can be effective in reducing youth exposure to alcohol advertising and assesses current state practices, evaluating each state's current law and providing a means for each state to evaluate priorities for enforcement and statutory and regulatory reform.

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April 10, 2003

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About This Report

Alcohol advertising regulation can apply to *measured* and *unmeasured* media. Measured media encompass traditional forms of advertising—electronic media (radio and television), outdoor billboards and signs, and print (magazine and newspapers). Regulation of these media can either be directed at the advertisement's *content* or its *placement*. Content regulation addresses what images and statements can be in the ad, and placement regulation addresses where the ad can be shown to the public.[8]

Unmeasured media include nontraditional venues for promoting a product: sponsorships of music concerts, sporting events, and other forms of entertainment and celebrations; consumer contests; prizes; giveaways; product placement in movies and television shows; novelties and other consumer items (e.g., logos on t-shirts); and Internet advertising, among other marketing activities. These marketing venues and strategies are part of a dramatic shift in advertising strategy, termed *branding*, where the advertiser establishes an emotional connection between the brand and the targeted audience. The brand becomes embedded in the audience's experience, cultural icons, and values. Content and placement therefore merge, and, to be effective, regulation must address both variables concurrently. The alcohol industry's increasing reliance on unmeasured media strategies reflects a general trend within the consumer products and marketing industries.

For this report, the Center on Alcohol Marketing and Youth commissioned the Legal and Enforcement Policy Analysis Division of the Pacific Institute for Research and Evaluation to examine potential state regulatory strategies for both measured and unmeasured media advertising, dividing measured media regulations into those that focus on content and placement. For each regulatory category the analysis defines the key elements of a "best practice." Each state's current law (both statutory and regulatory) is then rated as follows:

BP: all elements of the best practice are present;
I: at least one but not all elements of the best practice is present;
--: the state does not address the regulatory category, the law lacks any of the elements of best practices, or the law may be unenforceable (e.g., unconstitutional).

Table 1 provides a state-by-state analysis for each of the 12 regulatory categories in the report.

Please note:

1. Each of the 12 categories used to rate states in this report has very specific and narrow definitions that may not mirror either the law of any particular state or a customary definition in any one state or group of states. The categories and definitions were chosen with legal conventions and requirements in mind. Please carefully consult the definitions as you interpret the ratings assigned to each state. State law may cover a topic generally but not include the specific language required in the rating criteria used for this report.
2. The ratings are based on a review of state statutes and regulations, and not on their implementation or enforcement. In some cases, ABC agencies may have implemented laws in a manner that accomplishes the desired result even though the laws themselves did not meet the criteria used for this analysis. Since implementation

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The Center on Alcohol Marketing and Youth at Georgetown University monitors the marketing practices of the alcohol industry to focus attention and action on industry practices that jeopardize the health and safety of America's youth. Reducing high rates of underage alcohol consumption and the suffering caused by alcohol-related injuries and deaths among young people requires using the public health strategy of limiting the access to and the appeal of alcohol to underage persons.

The Center is supported by grants from The Pew Charitable Trusts and the Robert Wood Johnson Foundation to Georgetown University. The opinions expressed in this report are those of the authors and do not necessarily reflect those of the foundations.

Legal and Enforcement Policy Analysis Division, Pacific Institute for Research and Evaluation (PIRE)

The division focuses on the role of legal policy in the protection and advancement of public health objectives, with an emphasis on preventing alcohol, tobacco and other drug problems. Headed by James F. Mosher J.D., the division conducts legal research documenting alcohol, tobacco and other drug policies at local, state and federal levels; develops standards for interpreting relevant laws and regulations; and provides resources, training and technical assistance to researchers, community members and policymakers.

(continued)

was not included in the analysis, these states may have received a lower rating based on the statutory and regulatory mandates only.

3. The analysis focuses exclusively on state legislation. Local jurisdictions may have enacted alcohol advertising regulations that meet the criteria, but these provisions are not included in this analysis. At least two states — Hawaii and Maryland — regulate alcohol industry practices primarily through local legislation. Their ratings for state legislation might therefore be considered artificially low.

State Alcohol Advertising Provisions

1. Prohibit False or Misleading Alcohol Advertising

This is a critical, basic provision that can provide for state action with regard to alcohol advertising, especially on television. There is no constitutional protection for false or misleading advertising, and any advertisement that appeals to underage persons could be interpreted as misleading since it is inviting an illegal transaction. Legal interpretations of the terms false, misleading and targeting/appealing are not well developed as they apply to alcohol advertising.[9] However, a state with such a provision provides a basis for conducting investigations, establishing specific rules regarding ad content that is attractive to minors (those under 21 years of age), and developing remedies to ensure that the ad will not be misleading. A state can use the provision to enforce all of the other content-based provisions analyzed below (as an inferred subset) even if the specific provisions are not included in the state's regulatory structure. To be effective, the provision should be in the state ABC code so that the ABC enforcement agency has authority to enforce it. Provisions outside the ABC code are therefore not included in this analysis.

An effective false or misleading law has three key components:

(1) includes "misleading" as a specific term and has language to the effect that the provision covers advertising that can create a misleading impression irrespective of falsity;
(2) applies to alcohol advertising generally in the state (i.e., is not limited to certain types of advertising or products or applies only to some advertisers [e.g., Georgia applies its provision to on-sale advertising only]);
(3) does not focus on product quality or ingredients.

The federal statute provides an excellent definition of "misleading," although the provision applies it only to "statements" in the ad and does not include "images" that might be misleading:

> The advertisement of [any alcoholic beverage] shall not contain: …
> Any statement that is false or untrue in any material particular, or that, irrespective of falsity, directly, or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific or technical matter tends to create a misleading impression [27 CFR 4.64, 27 CFR 5.65, 27 CFR 7.54].

The same federal statute also prohibits subliminal or similar techniques in alcohol advertising, which could potentially be inferred as a form of misleading advertising:

> The advertisement of [any alcoholic beverage] shall not contain: …
> (k) Deceptive advertising techniques. Subliminal or similar techniques are prohibited. "Subliminal or similar techniques," as used in this part, refers to any device or technique that is used to convey, or attempts to convey, a message to a person by means of images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.

Three states received a ***BP*** rating: Idaho, Illinois, and Massachusetts; 19 states and the District of Columbia had at least one, but not all of the best practices elements noted above and received an ***I*** rating. The remaining 28 states received a – rating: either their laws did not include a false or misleading statute or the provision was ineffective in addressing alcohol advertising that appeals to youth.

2. Prohibit Alcohol Advertising that Targets Minors

This is the most important of the specific content-based restrictions. Although a state agency can argue that advertising that targets minors is false or misleading, enforcement will be much easier if a specific provision is included. On the other hand, a provision that is poorly drafted will probably undermine a general false or misleading statute—a court is likely to conclude that the state legislature intended the "target minors" provisions to override (or serve as an interpretation of) a more general "false and misleading" statute. For this reason, if a state has a "targeting minors" provision it is important that it not unduly restrict its scope.

The examination of state statutes found that, in many cases, the laws were diluted or made ineffective by including one or more of the following provisions:

(1) proof that the advertiser "intended" to target underage persons;
(2) limitations regarding the types of advertising included (limited to specific objects or images, such as the Easter Bunny or Santa Claus);
(3) use of the term "child" or "children," which can be interpreted to omit those 18 to 20 years of age;
(4) proof that the ad has a "special appeal" or is particularly attractive to underage persons (thus implying that the ad is permissible if it also appeals to adults).[10]

Alabama provides a model for a "targeting minors" statute:

> No advertisement shall include anything which might appeal to minors by implying that the consumption of alcoholic beverages is fashionable or the accepted course of behavior.
> [Ala. Admin. Code § 20-X-7-.01 (e)]

As noted above, it is critically important that a "targeting minors" provision be well drafted. A poorly drafted law that requires added proof of the above elements can actually undermine a "false and misleading" statute. For example, if the law requires proof of the advertiser's intent, then it is possible or even likely that a court would find that this requirement would also apply when interpreting a misleading ad.

Eleven states received a ***BP*** rating: Alabama, Delaware, Maine, New Hampshire, New Jersey, North Carolina, Oregon, Utah, Vermont, Virginia, and West Virginia. These states had a targeting provision that was not constrained by any of the elements listed above. No states fall into the intermediate or incomplete category, since a law with any of the limitations was rated as less effective than no provision at all. Thirty-nine states and the District of Columbia earned a -- rating—either there is no targeting minor law in the state, or the law includes one of the four limitations.

3. Prohibit Images of Children in Alcohol Advertisements

Some states prohibit the portrayal of children in alcohol advertising. This is a significantly less important issue and can probably be inferred if a state has either of the provisions described above. Still, it provides a basis for state action and has therefore been included in this analysis.

Connecticut's statute provides an example of such a provision (combined with a limited "targeting underage persons" provision):

> [No alcohol advertisement shall include] any scene in which is portrayed a child or objects, such as toys, suggestive of the presence of a child or which in any manner portrays the likeness of a child or contains the use of figures or symbols which are customarily associated with children. [CT Reg. § 30-6-A31(a)(6)].

The specific wording of the provisions may vary. They may prohibit advertisements that "depict," "make reference to," "portray likenesses of," "portray" or "are suggestive of the presence of," "children" or "minors." All of these terms were rated equally as long as the language clearly prohibited images of children in alcohol ads.

Eight states and the District of Columbia earned a ***BP*** designation: Connecticut, Illinois, Michigan, Minnesota, Nebraska, New Hampshire, Ohio, and Washington. The remaining 42 states received a -- rating.

4. Prohibit Images or Statements that Associate Alcohol with Athletic Achievement

As with the prohibition of child images, the prohibition of athletic achievement themes provides a basis for state action and review. This more specific provision can enhance the utility of the broader provisions.

Connecticut's statute provides a model:

> [No alcohol advertisement shall contain] any statement, picture or illustration implying that the consumption of alcoholic liquor enhances athletic prowess, or any statement, picture or illustration referring to any known athlete, if such statement, picture or illustration implies, or if the reader may reasonably infer, that the use of alcoholic liquor contributed to such known athlete's athletic achievements. [CT Reg.§ 30-6-A31(a)(6)]

Statutory language varies to some degree across state provisions. The prohibitions may relate to "pictures," "illustrations," and/or "statements" in the advertisements, and these may "contribute to," "enhance," or leave readers to "reasonably infer" that alcohol is involved in athletic achievement. These variations were treated equally in this analysis.

Six states—Connecticut, New Jersey, North Carolina, Utah, Virginia, and Washington—and the District of Columbia received a ***BP*** rating for this category. Oregon received an ***I*** rating because its provision requires proof of a causal relationship (rather than an association) between alcoholic beverages and athletic achievement. The remaining 43 states received a -- designation.

5. Prohibit Images or Statements that Portray or Encourage Intoxication

As with athletic achievement themes and child images, ads that encourage or portray intoxication can probably be inferred in a false or misleading provision (although not necessarily in a targeting underage persons law). The provision should prohibit: (1) the portrayal of intoxication in the ad; and/or (2) the promotion of intoxication in any way—through referring to its enhanced alcohol content or emphasizing its intoxicating qualities.[11]

The provisions addressing these two elements differ only in their wording. For example, the laws may forbid ads that: induce people to consume alcoholic liquor to excess; make references to the intoxicating effects of alcohol; depict activities that tend to encourage excessive and/or uncontrollable consumption; encourage or induce drinking excessive amounts or at an unduly rapid rate; encourage intemperance; or use words such as "high test," "high proof," and "extra strong." Some states limit the provisions application to one type of alcoholic beverages (e.g., distilled spirits).

The nine states (Delaware, North Carolina, Ohio, Oregon, Utah, Vermont, Virginia, Washington, and West Virginia) that prohibit the portrayal and/or the encouragement of intoxication without limitation as to the type of beverage received a ***BP*** rating. Two states (Illinois and Pennsylvania) received an ***I*** rating because their statutes do not apply to all alcoholic beverages. The remaining 39 states and the District of Columbia received a -- rating.

6. Establish Explicit Jurisdiction Over In-State Electronic Media

States have largely abdicated regulatory authority for electronic media—television and radio—even though a review of federal preemption law suggests that only transmissions into a state from out of state or on cable are preempted.[12] In other words, broadcasts that originate within a state are subject to state regulation. Interviews with state enforcement officials suggest that many states do claim this jurisdiction. A state may claim such jurisdiction without a provision that makes the authority explicit. However, an explicit statement of jurisdiction is substantially preferable.

In some cases, the jurisdictional provision is part of a statute that may raise constitutional problems. For example, Alabama claims jurisdiction over all forms of media in a statute that requires prior approval by the ABC Board before any advertisement can be aired or published. The prior-approval provision does not include specific application guidelines or strict timeline limits, which may raise constitutional questions. In these cases, the statute received a -- rating.

Thirteen states have provisions that explicitly provide the alcohol control agency jurisdiction over both television and radio advertising and therefore received a ***BP*** rating: Illinois, Kentucky, Maryland, Mississippi, Missouri, New Hampshire, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Utah and Virginia. Texas and Washington received an ***I*** classification. Texas's provision included radio but not television; Washington's provision includes an ambiguous exception that could be interpreted to exclude most licensees. Three states, Alabama, Minnesota and West Virginia, have provisions that may raise constitutional questions. These states as well as the remaining 32 states and the District of Columbia received a -- designation.

7. Restrict Outdoor Alcohol Advertising in Locations Where Children Are Likely to Be Present

Outdoor advertising includes all forms of print advertising placed in locations where the general public can view it. Billboards, paintings, banners, posters and the like are all included in this category. Legal provisions draw a distinction between outdoor advertising associated with alcohol retail outlets and that in other locations, a distinction maintained in this report (see subsection 9 below). Restrictions on outdoor advertising near schools and churches (subsection 8) have also been analyzed, even though these can be viewed as a subset of this category, as many states have this specific provision.

Clearly, the most effective means for reducing youth exposure to outdoor alcohol advertising is to restrict the medium generally, without reference to ad content. Constitutional issues arise when outdoor advertising is permitted but the state restrictions pertain to a specific product, such as alcohol or tobacco, while permitting other ad content. Careful drafting is required to avoid having the statute invalidated.

Baltimore was the first jurisdiction to enact a "youth presence" outdoor alcohol advertising ordinance. It provided that, with certain exceptions, billboards could not be placed in residential areas of the city. The ordinance made a sharp distinction between locations where children are routinely present and those where children are less likely to congregate. Several cities followed suit after a federal appellate court held that the Baltimore ordinance was constitutional.[13] That opinion, as well as the recent U.S. Supreme Court decision *Lorillard v. Reilly*,[14] strongly suggests that, to be constitutional, a law restricting outdoor alcohol advertising must be tailored in this manner so that its purpose is clearly to reduce youth exposure without unduly restricting adult viewing. Restrictions that result in virtual bans of outdoor alcohol advertising in a given jurisdiction are likely to be found unconstitutional. Given the Supreme Court's concerns, the states' best strategy is probably to mandate or at least permit local ordinances on this topic, provide general guidelines for implementation, and allow local jurisdictions to tailor the restriction to ensure that the goal of reducing youth exposure is met.

States can also prohibit outdoor advertising in any public venue, e.g., buses, public buildings and stadia, etc., without raising constitutional issues. In this case, the state (or municipality affected) constitutes the advertiser and has the authority to determine ad content. Several municipalities have enacted such restrictions, e.g., on public transit or in public parks.

States in general have not followed the lead of local jurisdictions in restricting outdoor alcohol advertising. State statutes that ban outdoor alcohol advertising specifically (while permitting other forms of outdoor advertising) are probably not constitutional without substantial amendment to ensure proper targeting, as discussed above.

Four states (Alaska, Hawaii, Maine and Vermont) ban or severely restrict outdoor advertising without reference to ad content and received a ***BP*** rating. No other state received this rating because other state provisions that restrict outdoor alcohol advertising are too broad (i.e., not tailored to youth exposure). New Hampshire, South Carolina, and Utah fall in this category. For example, the Utah statute states that, "the advertising of alcoholic beverages on billboards is prohibited," with only a narrow exception to allow temporary advertising related to sporting or other events.

Only two states (Mississippi and Tennessee) received an ***I*** rating because they include provisions that prohibit billboard advertising in "dry" counties only. These are likely to be found constitutional since there is no commercial free speech right to advertise an illegal product. The remaining 44 states and the District of Columbia received a -- rating.

8. Prohibit Outdoor Alcohol Advertising Near Schools, Public Playgrounds and Churches

A well drafted youth-placement ordinance will incorporate this variable, which involves establishing distance requirements from specific youth venues. Several states have restricted youth exposure in this manner rather than addressing the issue more generally, and this fact is recognized in the analysis. Requirements may vary by the distance requirements and the types of alcoholic beverage advertising and youth venues specified. Distances greater than 500 feet may raise constitutional problems, depending on the impact such a provision has on adult viewing. Shorter distances, on the other hand, severely restrict the impact of the provision. A best practices rating requires:

(1) a distance threshold of 500 feet;
(2) inclusion of all types of alcoholic beverage advertising; and
(3) inclusion of schools, public playgrounds and churches as youth venues.

No state received the ***BP*** classification, and five received an ***I*** rating. Ohio's statute states that no billboard advertising of "any brand of alcoholic beverage" is permitted within 500 feet of any church, school or public playground. However, it is limited to billboards that are "visible" to the specified youth venues and appears to allow non-branded alcohol advertising. Three states have statutes with distance requirements of under 500 feet (Indiana, 200 feet; Kentucky, 100 feet; Pennsylvania, 300 feet). Pennsylvania includes public playgrounds in their provisions, and Indiana and Kentucky do not. Kentucky's provisions are only related to malt beverages. Washington has a unique statute that creates implementation challenges. It bans outdoor alcohol advertising in "proximity" to "schools, churches, or playfields used primarily by minors, where the administrative body of said schools, churches, playfields, object to such placement" as well as in any "place which the board in its discretion finds contrary to the public interest." The remaining 45 states and the District of Columbia received a – rating.

9. Restrict Alcohol Advertising on Alcohol Retail Outlet Windows and Outside Areas

Most states have extensive regulation of print advertising used at retail alcohol outlets. Most of the provisions relate to how distributors and producers provide the promotional materials to the retailers, a part of the states' overall goal of restricting the influence of distributors and producers over retailers. These provisions, termed *tied house laws*, are highly complex and varied across jurisdictions and do not directly address youth targeting. They therefore were not included in this analysis. Also omitted were sign regulations related exclusively to the inside of an establishment (except signs placed on the inside of windows and visible from the outside). Such restrictions do arguably reduce youth exposure to alcohol advertising, particularly in grocery and convenience stores, where children are likely to be present. However, their complexity and entanglement with tied house provisions placed them beyond the scope of this analysis.

This analysis has therefore examined specifically those provisions that restrict print advertising on the outside of the building or the inside of windows (and viewable from the outside). This reflects the dominant public health concern, particularly in many inner-city communities, that off-sale retail outlets not become a large outdoor advertisement for alcohol and a blight to the community. Restrictions are permissible as a means both to reduce youth exposure and to address a public nuisance problem.

Key criteria include:

(1) The regulation significantly limits the amount of advertising on the outside and in the immediate vicinity of the retail establishment.
(2) The regulation significantly limits the amount of advertising placed on both the inside and outside of windows. To be effective, the regulation should establish a specific limitation.

The emphasis on window signs reflects the concern they raise in many communities, particularly in inner-city neighborhoods. Alcohol outlets frequently dominate the retail landscape in these neighborhoods, and the proliferation of tobacco and alcohol advertising in the windows may constitute a blight and unduly expose the high numbers of young people who reside there. In many cases, windows constitute the bulk of the off-sale retail establishment's outside space, so restrictions on what can go on the outside of buildings that do not address signs on windows are of limited utility.

California has a statute that establishes a regulatory strategy that meets the general criteria. It reads as follows:

> No more than 33 percent of the square footage of the windows and clear doors of an off-sale premises shall bear advertising or signs of any sort, and all advertising and signage shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance to the premises. However, this latter requirement shall not apply to premises where there are no windows, or where existing windows are located at a height that precludes a view of the interior of the premises to a person standing outside the premises. [CA. Bus. & Prof. Code § 25612.5(c)(7)]

Some California communities are dissatisfied with the 33% limitation and have enacted their own ordinances that restrict window coverage to as little as 10%. A lower limit is preferable in reaching the goals of such a restriction.

A "best practices" rating required strict limitations on advertising on the inside or outside of retail outlet windows (no more than 10% of the space or a functional equivalent).

Only Virginia received a ***BP*** rating. Its statute does not limit window advertising to a particular percentage of window space, but it establishes a functional equivalent by limiting the number of signs (no more than two, unless at an intersection, then three), the size of the advertisements (limited to 12 inches height/width), and the content of the signs (not animated and limited to the terms appearing on the face of the license describing the privileges of the license). It also prohibits interior advertising that can be viewed from the outside.

Six states (California, Kansas, Mississippi, South Carolina, Texas and Utah) are classified as ***I***, with significant variation among the relevant provisions. As noted above, California is the only state that limits window advertising to a particular percentage of window space, but its 33% requirement is greater than the 10% threshold. The remaining five states vary in their regulation of the number, size, and placement of signs, none of which rise to the equivalent of a 10% restriction. Oklahoma's statute is probably unconstitutional because it is overly broad.[15] Oklahoma, the remaining 42 states, and the District of Columbia received a -- rating.

10. Prohibit Alcohol Advertising on College Campuses

Because a large percentage of college students are underage, states can limit alcohol advertising on college campuses. State campuses in particular can be the subject of regulation since the state is the landowner and has authority to determine advertising placement without constitutional objection. The specific concern here is with measured media advertising. Restrictions on alcohol industry sponsorship of college events are included in the promotions section below.

Key criteria include:

(1) advertising in college newspapers and other publications is prohibited;
(2) advertising on campus is prohibited (handbills, etc.); and
(3) all college campuses in state are included.

Provisions in three states (New Hampshire, Pennsylvania and Utah) met these three criteria and received a ***BP*** rating. Only one state, Virginia, received an ***I*** classification. Its statute restricts alcohol advertising in college student publications, but it allows alcohol manufacturers, bottlers, and wholesalers to put "public health, safety, and welfare" advertising (such as "responsible drinking messages") in college papers and to use the "name, logo and address" of the sponsoring industry member. The remaining 46 states and the District of Columbia received a -- rating.

State Alcohol Advertising Provisions: Promotions

As noted in the Introduction, promotions involve unmeasured media such as sponsorships, giveaways, rebates, and consumer products with logos, such as t-shirts. This report examined two key types of promotions that are likely to reach underage youth and are potentially subject to state regulation: sponsorship of civic events and giveaways. The analysis was limited in part because of the complexity of the legal provisions in this arena. They are difficult to interpret and compare across states. The analysis therefore examined specific marketing practices and assessed whether existing state provisions apply to them.

11. Restrict Sponsorship of Civic Events

States can restrict the industry's ability to sponsor civic events such as fairs, public celebrations, music concerts, sporting events and the like. Blanket prohibitions are permissible on public property, such as parks and municipal stadiums and government buildings. Restrictions in private venues are permissible, at least if tied to the percentage of participants who are underage. Thus, sponsorship of school and college events can be prohibited, since a substantial percentage of likely participants will be underage.

State provisions regarding sponsorship vary widely and generally are not based on public health concerns. They often explicitly permit sponsorships and then place restrictions on how they are accomplished. For example, California has a law permitting producers to sponsor nonprofit and community public service and fundraising events [Cal. Adm. Code Title 4, Rule 106(h)].[16]

A best practices rating required that the state provisions:

(1) prohibit alcohol industry sponsorship of college/school events;
(2) prohibit alcohol industry sponsorship of events in public venues (e.g., parks, street fairs, government buildings); and
(3) significantly limit sponsorship of events in private venues other than alcohol retail outlets.

No state met these criteria. Five states (Florida, Michigan, Minnesota, Utah and Virginia) received an ***I*** classification. All five address sponsorship of college and school events; no state provision addresses sponsorships in public or private venues. Virginia has the most inclusive provision. It prohibits alcoholic beverage advertising in connection with "any sponsorship on a college, high school or younger age level." Utah's provision states that the alcohol advertisement "may not be directed or appeal primarily to minors . . . by sponsoring any school, college or university activity." Michigan's and Minnesota's provisions are narrowed by the fact that they prohibit sponsorship of college/school events only when the sponsorship involves the sale or consumption of alcohol. Florida's provision applies only to the University of Florida. The remaining 45 states and the District of Columbia received a -- rating.

12. Limit Giveaways (Contest, Raffles, etc.)

Many states limit the industry's ability to provide free goods and services to consumers. Most common are provisions that limit what producers and wholesalers can give to retailers under the states' tied house laws, as noted above. These indirectly affect consumers, since retailers are a common source of free goods. However, they do not address what producers and distributors can give to consumers directly. Another common regulation involves giveaways by on-sale retailers within the establishment that are not derived from producers or distributors—free drinks, contests that result in free drinks, etc. Since the focus of this report is on advertising and marketing that may reach young people, the report catalogues neither of these two types of provisions, which are complex and have only an indirect effect on underage advertising exposure.

The specific focus is therefore on provisions that restrict the ability of distributors and producers to provide rewards or prizes directly to consumers. Examples include promotions that award consumers prizes when proof of purchase is provided (e.g., an Anheuser-Busch Company promotional campaign that awarded prizes to consumers who turned in specified numbers of Budweiser bottle caps); and distribution of consumer goods with company logos or advertising on them as a reward for winning a contest or lottery (which typically occurs at fairs and midways). The latter can either be banned or limited to persons 21 years or older.

The analysis therefore searched for provisions that:

(1) prohibit any giveaways as reward for purchasing the producer's or distributor's products; and
(2) prohibit the distribution of promotional materials at commercial or civic events at least to those under the legal drinking age.

The search did not find a single state that meets the second criterion. Eight states meet the first criterion and received an ***I*** rating: California, Connecticut, Mississippi, North Carolina, Ohio, Pennsylvania, Utah, and Virginia. There was relatively little diversity in the language used in these state provisions. They all prohibit promotions, gifts, prizes, sweepstakes, contests, coupons, and/or rebates that are predicated upon product purchase. One state also prohibits entry fees for contests or sweepstakes, and another prohibits either directly or indirectly requiring purchase of products to enter contests and sweepstakes. The remaining 42 states and the District of Columbia received a -- rating.

Table 1: Ratings of State Alcohol Advertising Laws

	FALSE OR MISLEADING	TARGETING MINORS	PORTRAYING CHILDREN	ATHLETIC ACHIEVEMENT	INTOXICATION	IN-STATE ELECTRONIC MEDIA	OUTDOOR ADS: NEAR CHILDREN	OUTDOOR ADS: NEAR SCHOOLS, PLAYGROUNDS, CHURCHES	RETAIL WINDOWS, OUTSIDE AREAS	COLLEGE CAMPUSES	SPONSORING CIVIC EVENTS	PROMOTING GIVEAWAYS
Alabama	I	BP	--	--	--	--	--	--	--	--	--	--
Alaska	--	--	--	--	--	--	BP	--	--	--	--	--
Arizona	--	--	--	--	--	--	--	--	--	--	--	--
Arkansas	--	--	--	--	--	--	--	--	--	--	--	--
California	--	--	--	--	--	--	--	--	I	--	--	I
Colorado	--	--	--	--	--	--	--	--	--	--	--	--
Connecticut	I	--	BP	BP	--	--	--	--	--	--	--	I
Delaware	I	BP	--	--	BP	--	--	--	--	--	--	--
District of Columbia	I	--	BP	BP	--	--	--	--	--	--	--	--
Florida	--	--	--	--	--	--	--	--	--	--	I	--
Georgia	--	--	--	--	--	--	--	--	--	--	--	--
Hawaii	--	--	--	--	--	--	BP	--	--	--	--	--
Idaho	BP	--	--	--	--	--	--	--	--	--	--	--
Illinois	BP	--	BP	--	I	BP	--	--	--	--	--	--
Indiana	--	--	--	--	--	--	--	I	--	--	--	--
Iowa	--	--	--	--	--	--	--	--	--	--	--	--
Kansas	I	--	--	--	--	--	--	--	I	--	--	--
Kentucky	I	--	--	--	--	BP	--	I	--	--	--	--
Louisiana	--	--	--	--	--	--	--	--	--	--	--	--
Maine	--	BP	--	--	--	--	BP	--	--	--	--	--
Maryland	--	--	--	--	--	BP	--	--	--	--	--	--
Massachusetts	BP	--	--	--	--	--	--	--	--	--	--	--
Michigan	--	--	BP	--	--	--	--	--	--	--	I	--
Minnesota	I	--	BP	--	--	--	--	--	--	--	I	--
Mississippi	--	--	--	--	--	BP	I	--	I	--	--	I
Missouri	I	--	--	--	--	BP	--	--	--	--	--	--
Montana	--	--	--	--	--	--	--	--	--	--	--	--
Nebraska	I	--	BP	--	--	--	--	--	--	--	--	--
Nevada	--	--	--	--	--	--	--	--	--	--	--	--
New Hampshire	I	BP	BP	--	--	BP	--	--	--	BP	--	--
New Jersey	I	BP	--	BP	--	--	--	--	--	--	--	--
New Mexico	--	--	--	--	--	--	--	--	--	--	--	--
New York	--	--	--	--	--	--	--	--	--	--	--	--
North Carolina	I	BP	--	BP	BP	BP	--	--	--	--	--	I
North Dakota	--	--	--	--	--	--	--	--	--	--	--	--
Ohio	--	--	BP	--	BP	BP	--	I	--	--	--	I
Oklahoma	--	--	--	--	--	--	--	--	--	--	--	--
Oregon	I	BP	--	I	BP	BP	--	--	--	--	--	--
Pennsylvania	--	--	--	--	I	BP	--	I	--	BP	--	I
Rhode Island	--	--	--	--	--	--	--	--	--	--	--	--
South Carolina	--	--	--	--	--	--	--	--	I	--	--	--
South Dakota	--	--	--	--	--	--	--	--	--	--	--	--
Tennessee	I	--	--	--	--	BP	I	--	--	--	--	--
Texas	I	--	--	--	--	I	--	--	I	--	--	--
Utah	I	BP	--	BP	BP	BP	--	--	I	BP	I	I
Vermont	I	BP	--	--	BP	--	BP	--	--	--	--	--
Virginia	I	BP	--	BP	BP	BP	--	--	BP	I	I	I
Washington	I	--	BP	BP	BP	I	--	I	--	--	--	--
West Virginia	I	BP	--	--	BP	--	--	--	--	--	--	--
Wisconsin	--	--	--	--	--	--	--	--	--	--	--	--
Wyoming	--	--	--	--	--	--	--	--	--	--	--	--

Note 1: No billboards of any type are permitted in Alaska, Hawaii, Maine, or Vermont.
Note 2: New Hampshire, South Carolina, and Utah have been given a -- designation in the billboard category because the statutes appear to be unconstitutional.
Note 3: New Hampshire has been given a "BP" designation in the category of advertisements on school grounds. It is part of a broader statute that bans advertising related to fraternal, religious, patriotic, social, and civic groups. While elements of the statute may be unconstitutional, those in which this analysis is interested appear to be constitutional.

Appendix

The Relationship of State and Federal Authority to Regulate Alcohol Advertising

The federal government enacted the Federal Alcohol Administration Act (FAAA) shortly after Repeal, and this legislation has served as the primary vehicle for regulating alcohol advertising in the United States. The Bureau of Alcohol, Tobacco and Firearms (BATF) has the primary responsibility for enforcing the FAAA. Located in the Department of Treasury, consumer protection and advertising regulation are not its areas of expertise, and the FAAA provides only limited authority and guidance. The Federal Trade Commission (FTC), which regulates most forms of product advertising and does have expertise and history in consumer protection regulation, has concurrent jurisdiction with BATF, but has traditionally deferred to the primary agency. In 1999, FTC did conduct an investigation of alcohol industry marketing practices, but chose to recommend only voluntary standards of conduct.

Although the federal government has exercised primary responsibility, states have concurrent jurisdiction; indeed, state authority is included in the 21st Amendment of the U.S. Constitution. Yet states have also largely ignored the public health impact of alcohol advertising and, as this report documents, have taken only minimal steps to address the exposure of youth to alcohol marketing. What limitations exist within state statutes and laws are further hampered by the lack of enforcement by state agencies. Several factors contribute to this:

1. States have focused primarily on the alcohol retail trade and have generally deferred to the federal government on regulatory issues affecting the national market and the alcohol industry's practices.

2. To the extent that they have addressed advertising issues, states have focused primarily on the ability of distributors and producers to provide promotional items to retailers. This concern dates back to the end of Prohibition and the concern about "tied houses"—the undue influences producers can have over retail practices. This issue is of only tangential interest in the world of modern marketing.

3. Recent decisions by the U.S. Supreme Court expanding the commercial speech doctrine under the First Amendment have dampened the states' interest in regulating alcohol advertising. The decisions do not prohibit a wide array of regulatory options that could have a positive public health impact, but they do create a great deal of uncertainty and ambiguity.

4. State resources devoted to alcohol industry regulation are minimal and shrinking.

5. States have little guidance regarding what works in the area of alcohol advertising regulation and have not had the resources to coordinate efforts across states.

+ + +

Endnotes

[1] Calculated from data from Competitive Media Reporting (CMR) and estimates made by the Federal Trade Commission in *Self-Regulation in the Alcohol Industry: A Review of Industry Efforts to Avoid Promoting Alcohol to Underage Consumers* (Washington, D.C.: FTC, 1999).

[2] Center on Alcohol Marketing and Youth, *Overexposed: Youth a Target of Alcohol Advertising in Magazines* (Washington, D.C.: Center on Alcohol Marketing and Youth, 2002). Available at <http://camy.org/research/files/overexposed0902.pdf>. See also Center on Alcohol Marketing and Youth, *Television: Alcohol's Vast Adland* (Washington D.C.: Center on Alcohol Marketing and Youth, 2002), Available at <http://camy.org/research/files/television1202.pdf>.

[3] J. W. Grube, "Television alcohol portrayals, alcohol advertising and alcohol expectancies among children and adolescents," in *Effects of the Mass Media on the Use and Abuse of Alcohol*, ed. S.E. Martin and P. Mail (Bethesda: National Institute on Alcohol Abuse and Alcoholism, 2002), 105-121.

[4] J. Grube, "Alcohol advertising-a study of children and adolescents: preliminary results," <http://www.prev.org/prc/prc_videopresentations_grube_aasca.html> (19 Nov. 2002); H. Saffer, "Alcohol advertising and motor vehicle fatalities," *Review of Economics and Statistics*, 79: 431-442.

[5] See e.g. J. P. Pierce et al., "Tobacco industry promotion of cigarettes and adolescent smoking," *Journal of the American Medical Association* 279: 511-515 (1998); L.G. Pucci and M. Siegel, "Exposure to brand-specific cigarette advertising in magazines and its impact on youth smoking," *Preventive Medicine* 29: 313-320 (1999).

[6] See e.g. M.C. Farrelly et al, "Getting to the Truth: Evaluating National Tobacco Countermarketing Campaigns," *American Journal of Public Health* 92 (6): 901-907 (2002); L.K. Goldman and S. A. Glantz, "Evaluation of Antismoking Advertising Campaigns," *Journal of the American Medical Association* 279 (10): 772-777 (1998).

[7] H. Saffer, "Alcohol advertising and youth," *Journal of Studies on Alcohol* (Suppl. 14):173-181 (2002).

[8] In general, content regulation is more likely to raise constitutional issues, as the U.S. Supreme Court is reluctant to permit states to determine the content of advertising so long as it is not false and misleading. "Time, place and manner" regulations are more acceptable to the Court provided that the regulation targets a legitimate state interest (in this case reducing youth exposure) and permits the advertising in at least some venues for the intended (adult) audience. For discussion, see, e.g., *Metromedia, Inc. v. City of San Diego*, 453 US 490, 69 L. Ed.2d 800, 101 S. Ct. 2882 (1981).

[9] Recent federal cases addressing tobacco advertising have questioned the application of false and misleading provisions that deny or unduly limit adults' access to accurate commercial information. See, e.g., *Lorillard Tobacco Co. v. Reilly*, 533 US 525 (2001).

[10] Recent court opinions suggest that including a "special appeal" to minors in the regulation may be important in establishing its constitutionality under the First Amendment's commercial free speech doctrine. See, e.g., *Lorillard Tobacco Co. v. Reilly*, 533 US 525 (2001). A state might meet this constitutional requirement by linking the ad to other actions of the advertiser (e.g., ad placement strategies, advertiser research and ad development activities). The statute should therefore not limit the inquiry to the special appeal to children of the ad content itself, as is the case in some states.

[11] Statutes that prohibited advertising of happy hour or reduced priced drink promotions were not included. These advertising provisions are part of broader statutes that regulate the serving practices themselves and are more appropriately classified as regulations of on-sale commercial serving practices.

[12] See Appendix A for discussion of the lack of state regulatory activity regarding alcohol advertising.

[13] *Anheuser-Busch, Inc. v. Schmoke*, 101 F.3d 325 (4th Cir. 1996).

[14] 533 US 525 (2001).

[15] *Oklahoma Broadcasters Assn. v. Crisp*, 636 F. Supp. 978 (W.D. Okl. 1985).

[16] In many cases, the state is concerned with producer/distributor/retailer relationships. Note that civic events that occur in licensed premises (including large venues such as sports arenas) may be subject to tied house laws, which place restrictions on what producers and distributors can supply to retailers. In such cases, the distributor/producer must abide by signage restrictions and may be limited in its ability to fund the event. Many states have enacted exceptions to the tied house laws to accommodate the industry's desire to sponsor events in licensed venues, most notably in sports arenas and entertainment settings. These tied-house-related provisions were not analyzed primarily because of the complexity of the legal analysis.

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